



January 24, 2024.

*Via email*

Dear Members of the Bar,

In my message to the Bar on March 17, 2022, announcing the Ontario Superior Court of Justice's Guidelines to Determine the Mode of Proceeding in Civil, Family, Criminal and Small Claims Court I explained that the Guidelines are living documents and would be reviewed the following year after the Bar and the Court had had some time to work with them.

Accordingly, on February 7, 2023, my office sought your input. I am grateful for all the thoughtful and valuable input we received and I was pleased to see that the Bar had very few specific changes which you suggested were needed and that overall the overwhelming consensus was that the Guidelines, for the most part, were balanced and working well.

After receiving your input, the Office of the Chief Justice also sought the input of the Court's judicial working groups and the Court's judicial associations, all of whom had the benefit of your submissions. Your input along with the input of the Court's Judicial Working Groups (Criminal and Civil), the Senior Family Justice Consultation Committee and the Court's Associations – the Ontario Superior Court Judges' Association and the Ontario Superior Court Associate Judges' Association – were considered by the Regional Senior Justice Council in determining how the Court's presumptive guidelines had been working and what, if any, changes were needed.

As was done when the Guidelines were first developed, consideration of *all* justice participants' needs required a careful and thoughtful balance between the continued availability of both in-person and virtual attendances. The framework of those considerations are captured in the over-arching principles accompanying each set of Guidelines and are reflected in the mode of proceeding decided for each event in criminal, family and civil.

For your convenience, the few changes made to the over-arching principles accompanying each presumptive Guideline and the few changes made to the

presumptive events in each of the Court's Guidelines in Civil, Criminal and Family are summarized in Annex 1 along with a chart identifying the presumptive mode for each event. The full text of each Presumptive Guideline to determine the mode of proceedings in Criminal, Family and Civil (with changes highlighted in **yellow**) are also attached in Annex 2 and can be found on the Superior Court's website in English [here](#) and in French [here](#).

**The Guidelines are effective as of February 1, 2024. The Court's Consolidated Provincial Practice Directions will be updated accordingly on February 1, 2024 and all counsel and parties must also ensure they have checked the Regional Notices and Directions (which will also be updated for February 1, 2024) for any specific regional direction including any deviation from the Court's Presumptive Guidelines.**

Yours truly,

Geoffrey B. Morawetz,  
Chief Justice, Ontario Superior Court of Justice

## ANNEX 1

Summary of Changes made to Presumptive Guidelines & At-a-glance chart identifying the mode of appearance for each of Criminal, Family and Civil.

### 1. Guidelines to Determine Mode of Proceeding in Criminal

#### (i) Amendments to the Over-arching Principles:

- **Discretion of court:** added 'need for In-person Interpreters':

Discretion of the Court:

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person Interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

#### (ii) Amendments to Presumptive events:

- No changes.
- Presumptive Guideline in Criminal at a glance

Event	Presumptively In Person	Presumptively Virtual
Assignment court		x
Bail hearings		x
Bail reviews & 90 Day Detention reviews		x
Judicial pre-trials		x
Pre-trial motions	x	
Judge-alone trials	x	
Jury trials	x	
Guilty pleas	x	
Sentencing	x	
Summary conviction appeals and special motions: assignment court (in jurisdictions where these are held)		x

## 2. Guidelines to Determine Mode of Proceeding in Family

### (i) **Amendments to the Over-arching Principles:**

- **Discretion of court:** added ‘need for In-person Interpreters’:

#### **Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person Interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

- **In-person hearings important:** added ‘ so that training opportunities may be provided to newer counsel’:

#### **In-person hearings important**

While the continued use of virtual hearings (or attendances) increases efficiency at many stages of the litigation process, in-person advocacy and participation remain an essential feature of our justice system. The court recognizes the importance of in-person attendances for more substantive matters; matters involving self-represented litigants, and **so that training opportunities may be provided to newer counsel**. These factors are to be considered in determining whether a presumption should be changed.

### (iii) **Amendments to Presumptive events:**

- **First appearances:** UFC court locations will decide presumption.

#### **First appearances:**

Each Unified Family Court location will decide whether first appearance courts will be held in person or virtually. In deciding whether these attendances will be conducted in person, the Court will take into account the availability of duty counsel and on-site mediation services.

- **Presumptive Guideline in Family at a glance**

<b>FAMILY Event</b>	<b>Presumptively In Person</b>	<b>Presumptively Virtual</b>
First appearances <b>*UFC Locations will decide presumption</b>		
Early or urgent case conferences and triage courts (where available)		x
Urgent motions		x
Case conferences, settlement conferences and trial management conferences	x	
Trial scheduling conferences, other trial management conferences and assignment court attendances (where required)		x
Motions for procedural relief and motions on consent		<b>* motions on consent, unopposed motions &amp; simple procedural motions - in writing. *More complex procedural motions-virtual</b>
Substantive regular/short motions Long motions  <b>*In Unified Family Court locations, Toronto and Windsor, regional practice direction or notice to the profession will direct the mode of appearance.</b>	<b>All motions for contempt – in person.</b>	<b>Outside of Toronto and Windsor, where regular motions in family cases are heard on mixed civil and family lists, substantive motions of less than an hour will be held by videoconference.</b>
Trials	x	
<b>CHILD PROTECTION Event</b>	<b>Presumptively In Person</b>	<b>Presumptively Virtual</b>
First hearing where child has been brought to a place of safety (5-day hearings)		x
Child protection lists or TBST appearances		x

Settlement conferences and trial management conferences	x	
Trial scheduling conferences, other trial management conferences and assignment court attendances (where required)		x
Motions on consent and motions for procedural relief only (including 14B motions)		* motions on consent, unopposed motions and simple procedural motions - in writing. *More complex procedural motions - virtual
Substantive/regular short motions *Regional practice directions or notices to the profession will direct the mode of appearance for these attendances.		
Long motions including summary judgment motions and temporary care and custody hearings	x	
Trials	x	
FRO Lists	x	
Refraining Motions		x
Dispute Resolution Conferences		x

### 3. Guidelines to Determine Mode of Proceeding in Civil

#### (ii) Amendments to the Over-arching Principles:

- **Discretion of court:** added 'need for In-person Interpreters':

#### **Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person Interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

- **In-person hearings important:** added ‘matters before Associate Judges, and so that training opportunities may be provided to newer counsel’

**In-person hearings important:**

While the continued use of virtual hearings (or attendances) increases efficiency at many stages of the litigation process, in-person advocacy and participation remain an essential feature of our justice system. The court recognizes the importance of in-person attendances for more substantive matters; matters involving self-represented litigants, **matters before Associate Judges, and so that training opportunities may be provided to newer counsel.** These factors are to be considered in determining whether a presumption should be changed.

**(iv) Amendments to Presumptive events:**

- **Discoveries** and **Mediations** removed from the Court’s presumptive guidelines
- **Contested Short motions & applications** distinguished from **Contested Long motions & applications:** short will be presumptively virtual with the additional factor of whether the matter is before an associate judge as a consideration in departing from the presumption, long will be presumptively virtual.

**Contested short motions and applications:**

All contested short motions (“short” as defined by the Region or court site) will be held virtually unless a party requests that it be held in person and the Court agrees or the Court or Regional Direction directs that it will be held in person. In directing that the contested short motion be held in person, the Court will take into account the positions of the parties; the complexity of the legal or factual issue; whether the outcome of the motion or application is legally or practically dispositive of a material issue in the case (e.g. summary judgement); whether

viva voce evidence will be heard; whether the matter is before an Associate Judge and any other factor bearing on the administration of justice.

**Contested long motions and applications:**

All contested long motions and applications (“long” as defined by the Region or court site) will be held in person unless a party requests that it be held virtually and the Court agrees or the Court or Regional direction directs that it will be held virtually.

- **Divisional Court: single judge hearings** distinguished from **panel hearings**: single will be presumptively virtual and panel hearings will be presumptively in person.

**Appeals and motions to the Divisional Court and applications for judicial review:**

**Single judge hearings:** All single judge hearings in the Divisional Court will be held virtually unless a party requests that it be held in person and the Court agrees or the Court directs that it will be held in person.

**Panel hearings:** All hearings before a panel of judges in the Divisional Court will be held in person, unless all parties consent to it being heard virtually and the Court agrees, or the Court directs that it will be held virtually.

- **Presumptive Guideline in Civil at a glance**

Event	Presumptively In Person	Presumptively Virtual
Case conferences		x
Pre-trial conferences involving trial management and scheduling issues only		x
Pre-trial conferences: settlement and trial management conferences		x
Trial and motion scheduling court		x
Consent motions, without notice motions and unopposed motions		*held in writing
Contested short motions and applications		x
Contested long motions and applications	x	



Judge-alone trials	x	
Jury trials	x	
Assessment hearings		x
Costs		*held in writing
<b>DIVISIONAL COURT EVENT</b>	<b>Presumptively In Person</b>	<b>Presumptively Virtual</b>
Motions for leave to appeal to the Divisional Court		*held in writing
Single judge hearings		x
Panel hearings	x	

## ANNEX 2

### Guidelines to Determine Mode of Proceeding in Criminal

Please see the [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

#### A. Overarching principles

These guidelines set out presumptive methods of attendance for events in criminal proceedings. In applying these guidelines, the Court will take into account the following general principles:

**(i) Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

**(ii) Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

**(iii) Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

**(iv) In-person hearings important:**

While the continued use of virtual proceedings increases efficiency at many stages in the litigation process, the Court also recognizes the importance of in-person interaction and hearings for more substantive attendances. For these matters, in-person advocacy and participation will remain an essential feature of our justice system.

**(v) Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

**(vi) Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

**B. Definitions of terms**

"Virtual" = proceedings using a platform like Zoom video or audioconference or by teleconference.

"Hybrid" = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

"In-person" = proceedings in which all parties, counsel and the judge are physically in the courtroom.

"Videoconference or audioconference" = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

"Teleconference" = connecting into a proceeding via a telephone number to a landline.

**C. Presumptive guidelines to determine mode of proceeding in criminal matters**

**(i) Assignment court:**

Assignment court appearances will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court specifies a different method of attendance. In deciding whether any assignment court appearance will be conducted other

than virtually, the Court will take into account whether the accused is self-represented (either in custody or out of custody) and any other factor bearing on the administration of justice, including any access to justice issues.

**(ii) Bail hearings, bail reviews and detention reviews:**

**(a) Bail hearings:**

All bail hearings will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

**(b) Bail reviews and detention reviews:**

All bail reviews and 90-day detention reviews will be held virtually subject to the discretion of the Court, which will take into account: the availability of a virtual suite from the custodial institution, whether the accused is self-represented, the position(s) of the parties and any other factor bearing on the administration of justice. The mode of appearance can be decided at the pre-bail hearing conference or a party may request one for this purpose.

**(iii) Judicial pre-trials:**

All judicial pre-trials will be held virtually (either by video or audioconference or in some jurisdictions by teleconference) unless the Court directs that an in-person judicial pre-trial is required in light of the accused being self-represented, there being multiple accused in a case, the complexity of trial issues, the length of the trial, or any other factor the Court decides warrants an in-person judicial pre-trial.

**(iv) Pre-trial motions:**

All pre-trial motions will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(v) Judge-alone trials:**

All judge-alone trials will be held in person unless both the accused and Crown consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding

and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(vi) Jury trials:**

All jury trials will be held in person. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference. This direction does not otherwise limit either the accused's or Crown's ability to seek to call a particular witness' evidence remotely as authorized by the Criminal Code or the common law.

**(vii) Guilty pleas:**

All guilty pleas will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

**(viii) Sentencing hearings:**

All sentencing hearings will be held in person unless both the accused and the Crown consent to it being heard virtually and the Court approves.

**(ix) Summary conviction appeals and special motions:**

**(a) Assignment court (in jurisdictions where these are held):**

All assignment court appearances related to summary conviction appeals and special motions will be held virtually (either by video or audioconference or in some jurisdictions by teleconference), with the exception of self-represented litigants, unless the Court specifies a different method of attendance.

**(b) Hearing of the motion:**

All summary conviction appeals will be held virtually subject to the discretion of the Court, which will take into account: whether the accused is self-represented, the position(s) of the parties, and any other factor bearing on the administration of justice. Where one of the parties requests another mode of appearance, they can do so at a case management conference or they can request a case management conference for this purpose.

## **Guidelines to Determine Mode of Proceeding in Family**

Please see the [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

### **A. Overarching principles**

These guidelines set out presumptive methods of attendance for events in family proceedings. In applying these guidelines, the Court will take into account the following general principles:

#### **(i) Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

#### **(ii) Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

#### **(iii) Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff, needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

#### **(iv) In-person hearings important:**

While the continued use of virtual hearings (or attendances) increases efficiency at many stages of the litigation process, in-person advocacy and participation remain an essential feature of our justice system. The court recognizes the importance of in-person attendances for more

substantive matters; matters involving self-represented litigants, and so that training opportunities may be provided to newer counsel. These factors are to be considered in determining whether a presumption should be changed.

**(v) Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

**(vi) Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

**B. Definitions of terms**

"Virtual" = proceedings using a platform like Zoom video or audioconference or by teleconference.

"Hybrid" = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

"In-person" = proceedings in which all parties, counsel and the judge are physically in the courtroom.

"Videoconference or audioconference" = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

"Teleconference" = connecting into a proceeding via a telephone number to a landline.

**C. Presumptive guidelines to determine mode of proceeding in family matters**

The following guidelines set out the Court's expectations for the default method of appearance for all family events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

## **1. Family**

### **(i) First appearances:**

Each Unified Family Court location will decide whether first appearance courts will be held in person or virtually. In deciding whether these attendances will be conducted in person, the Court will take into account the availability of duty counsel and on-site mediation services.

### **(ii) Early or urgent case conferences and triage courts (where available):**

All early or urgent case conferences and early intervention courts will be held by videoconference unless the Court specifies a different method of attendance.

### **(iii) Urgent motions:**

All urgent motions will be heard by videoconference unless the Court specifies a different method of attendance when the event is scheduled. A party who takes the position that the urgent motion should be heard in person should include in their motion materials the reasons why the motion should not be heard by videoconference.

### **(iv) Case conferences, settlement conferences and trial management conferences:**

All (i) case conferences, (ii) settlement conferences, and (iii) trial management conferences with a settlement focus, will be held in person unless a different method of attendance is approved by the Court in advance.

### **(v) Trial scheduling conferences, other trial management conferences and assignment court attendances (where required):**

All trial scheduling conferences, trial management conferences where the focus is on preparation for trial and assignment court attendances (where required) will be heard by videoconference unless, at a prior conference, the Court has specified a different method of attendance.

### **(vi) Motions for procedural relief and motions on consent:**

All motions on consent, unopposed motions and simple procedural motions will be conducted in writing. More complex procedural motions will be conducted by videoconference, unless the Court specifies that an in-person attendance is required.



**(vii) Substantive regular/short motions:**

Outside of Toronto and Windsor, in locations where regular motions in family cases are heard on mixed civil and family lists, substantive motions of less than an hour will be held by videoconference.

In Unified Family Court locations, Toronto and Windsor, regional practice direction or notice to the profession will direct the mode of appearance for these events.

All motions for contempt will be held in person.

**(viii) Long motions:**

All long motions will be held in person unless the Court has agreed to a virtual attendance in advance, which will be decided at the case conference.

If contempt is sought or there is a hearing alleging the wrongful removal or retention of a child, the motion will be held in person.

**(ix) Trials:**

All trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.

**2. Child Protection**

**(i) First hearing where child has been brought to a place of safety (5-day hearings):**

5-day hearings will be heard virtually unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events.

**(ii) Child protection lists or TBST appearances:**

Child protection lists or To Be Spoken To appearances will be held by videoconference unless the Court decides that an in-person hearing is required, taking into account any concerns regarding: (i) parental participation in virtual hearings or (ii) Legal Aid support for these events.

**(iii) Settlement conferences and trial management conferences:**

All (i) settlement conferences and (ii) trial management conferences with a settlement focus will be held in person unless a different method of attendance is approved by the Court in advance.

**(iv) Trial scheduling conferences, other trial management conferences and assignment court attendances (where required):**

All trial scheduling conferences, trial management conferences where the focus is on preparation for trial and assignment court attendances (where required) will be heard by videoconference unless, at a prior conference, the Court has specified a different method of attendance.

**(v) Motions on consent and motions for procedural relief only (including 14B motions):**

All motions on consent, unopposed motions or simple procedural motions will be conducted in writing. More complex procedural motions will be conducted by videoconference, unless the Court specifies that an in-person attendance is required.

**(vi) Substantive/regular short motions:**

Regional practice directions or notices to the profession will direct the mode of appearance for these attendances.

**(vii) Long motions including summary judgment motions and temporary care and custody hearings:**

All long motions, including summary judgment motions, and temporary care and custody hearings will be held in person unless the Court has agreed to a virtual attendance in advance, which requests should be raised at a prior court attendance.

**(viii) Trials:**

All trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness may be permitted to testify virtually by videoconference. Requests for virtual or hybrid trials will be addressed with the completion of the Trial Scheduling Endorsement Form prior to the scheduling of the trial.

**3. FRO Lists and Refraining Motions**

All Family Responsibility Office matters will be heard in person unless the Court directs a different method of attendance.

Refraining motions that are not held on regular FRO sittings at Unified Family Court locations, and those held in generalist locations, will be held by videoconference unless the Court directs a different method of attendance.

#### **4. Dispute Resolution Conferences**

All Dispute Resolution Conferences will continue to be held by videoconference.

## **Guidelines to Determine Mode of Proceeding in Civil**

Please see the [Regional Notices](#) for scheduling protocols related to the application of the following presumptive guidelines including scheduling processes related to requests for changes in the presumption.

### **A. Overarching principles**

These guidelines set out presumptive methods of attendance for events in civil proceedings. In applying these guidelines, the Court will take into account the following general principles:

#### **(i) Discretion of the Court:**

While presumptions for each event set out the default position of the Court, the final determination of how an event will proceed will remain subject to the discretion of the Court. This will take into account the issues in the proceeding, the expected length of the hearing, the evidentiary record, the status of the parties (e.g. self-represented litigants), **the need for in person interpreters**, and access to technology (including virtual capacity at institutions and courthouses).

#### **(ii) Rule 1.08:**

Rule 1.08 of the Rules of Civil Procedure sets out the procedure for the moving party to specify the proposed method of attendance at a hearing or other step in a proceeding. The moving party and responding party/parties are to refer to these guidelines which set out the general expectations of the Court regarding the method of attendance.

#### **(iii) Access to justice:**

While virtual platforms to conduct proceedings remotely have enhanced access to justice for many, the Court also recognizes that there are significant variations in the abilities of litigants to access and use the technology that is required for virtual hearings. Until such time as there is a means to provide access to technology to those who do not have it so that they can fully participate in a remote hearing, the Court will take this access issue into account when determining the appropriate mode of proceeding. In that respect, if remote proceedings are utilized, the needs of all participants must be met so they can fully and equally participate.

#### **(iv) Self-represented litigants:**

While the Court's determination of the appropriate mode of proceeding will necessarily take into account the ability of litigants to access and effectively use technology for virtual hearings, the Court will also consider other circumstances uniquely related to self-represented litigants. Issues such as the inability to obtain timely assistance from duty counsel and court staff,

needing support to use technology or the inability to adequately address issues in writing may mean that in proceedings involving a self-represented litigant, Courts may favour an in-person mode of proceeding.

**(v) In-person hearings important:**

While the continued use of virtual hearings (or attendances) increases efficiency at many stages of the litigation process, in-person advocacy and participation remain an essential feature of our justice system. The court recognizes the importance of in-person attendances for more substantive matters; matters involving self-represented litigants, matters before Associate Judges, and so that training opportunities may be provided to newer counsel. These factors are to be considered in determining whether a presumption should be changed.

**(vi) Hybrid options:**

In determining the mode of proceeding and the application of the guidelines, the Court will also take into account whether some parts of a proceeding should be conducted virtually and other parts conducted in person. In other words, hybrid options will be considered where appropriate or necessary.

**(vii) Impediments to a virtual hearing:**

There may be statutory, security or other impediments to having a remote hearing in certain matters, particularly criminal cases, civil contempt hearings and other matters that deal with sensitive information (e.g. child protection cases). Moreover, a party's or participant's personal circumstances (e.g. disabilities or caregiver responsibilities) may make remote hearings less suitable.

**B. Definitions of terms**

“Virtual” = proceedings using a platform like Zoom video or audioconference or by teleconference.

“Hybrid” = proceedings in which some justice participants are appearing physically in the courtroom and others are participating virtually.

“In-person” = proceedings in which all parties, counsel and the judge are physically in the courtroom.

“Videoconference or audioconference” = connecting into a proceeding using a platform like Zoom through video and audio or audio only.

“Teleconference” = connecting into a proceeding via a telephone number to a landline.

### **C. Presumptive guidelines to determine mode of proceeding in civil matters**

The following guidelines set out the Court's expectations for the default method of appearance for all civil events that will be applied across the province. However, the Court also recognizes that some Regions, in particular the Northwest, Northeast and those with circuiting judges, will require greater flexibility in hearing more cases virtually.

**(i) Case conferences:**

All case conferences will be held virtually (by videoconference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

**(ii) Pre-trial conferences involving trial management and scheduling issues only:**

All pre-trial conferences involving trial scheduling issues only will be held virtually (by videoconference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

**(iii) Pre-trial conferences: settlement and trial management conferences:**

All pre-trial conferences directed at settlement or both settlement and trial management will be held virtually (by videoconference or audioconference or by teleconference) unless the Court directs that an in-person pre-trial conference is required.

**(iv) Trial and motion scheduling court:**

All trial and long motion scheduling court appearances will be held virtually (by video conference or audioconference or by teleconference) unless the Court specifies a different method of attendance.

**(v) Consent motions, without notice motions and unopposed motions:**

All motions on consent of both parties, all motions without notice and all motions that are unopposed will be held in writing unless the Court specifies a different mode of proceeding.

**(vi) Contested short motions:**

All contested short motions ("short" as defined by the Region or court site) will be held virtually unless a party requests that it be held in person and the Court agrees or the Court or [Regional Direction](#) directs that it will be held in person. In directing that the contested short motion be held in person, the Court will take into account the positions of the parties; the complexity of the legal or factual issue; whether the outcome of the motion or application is legally or practically dispositive of a material issue in the case (e.g. summary judgement); whether viva

voce evidence will be heard; whether the matter is before an Associate Judge and any other factor bearing on the administration of justice.

**(vii) Contested long motions and applications:**

All contested long motions and applications (“long” as defined by the Region or court site) will be held in person unless a party requests that it be held virtually and the Court agrees or the Court or Regional direction directs that it will be held virtually.

**(viii) Judge-alone trials:**

All judge-alone trials will be held in person unless all parties consent to a virtual trial and the Court approves. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference.

**(ix) Jury trials:**

All civil jury trials will be held in person. The Court may consider the option of a hybrid proceeding and whether a witness, at the request of either party, may be permitted to testify virtually by videoconference.

**(x) Assessment hearings:**

All assessments for solicitor fees or judge-referred orders for assessment of costs will be held virtually (by videoconference).

**(xi) Costs:**

All motions for costs will be held in writing or as the Court directs.

**Divisional Court:**

**(xii) Motions for leave to appeal to the Divisional Court:**

All motions for leave to appeal to the Divisional Court will be held in writing unless the Court specifies a different mode of proceeding.

**(xiii) Appeals and motions to the Divisional Court and applications for judicial review:**

**Single judge hearings:** All single judge hearings in the Divisional Court will be held virtually unless a party requests that it be held in person and the Court agrees or the Court directs that it will be held in person.

**Panel hearings:** All hearings before a panel of judges in the Divisional Court will be held in person, unless all parties consent to it being heard virtually and the Court agrees, or the Court directs that it will be held virtually.